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NO. 84362-7

SUPREME COURT OF THE STATE OF WASHINGTON

MATHEW and STEPHANIE McCLEARY, et al.,

Respondents,

v.

STATE OF WASHINGTON,

Appellant.

**MOTION FOR LEAVE TO FILE AMICUS BRIEF BY
THE ARC OF KING COUNTY,
THE ARC OF WASHINGTON STATE, TEAMCHILD,
WASHINGTON AUTISM ALLIANCE & ADVOCACY,
OPEN DOORS FOR MULTICULTURAL FAMILIES,
SEATTLE SPECIAL EDUCATION PTSA,
BELLEVUE SPECIAL NEEDS PTA, GARY STOBBE, M.D.,
JAMES MANCINI, AND STATE REP. GERRY POLLET**

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I. RELIEF REQUESTED

Pursuant to RAP 10.6 and the Order dated July 25, 2017, The Arc of Washington State, The Arc of King County, TeamChild, Washington Autism Alliance & Advocacy, Open Doors for Multicultural Families, Seattle Special Education PTSA, Bellevue Special Needs PTA, neurologist Gary Stobbe, speech therapist James Mancini, and Washington State Rep. Gerry Pollet (collectively “Movants”) respectfully request permission to file a brief as amici curiae addressing the Legislature’s 2017 Post-Budget Report and State of Washington’s July 31, 2017 Memorandum. If permission is granted, the amicus brief will be filed by August 30, 2017, in accordance with the July 25, 2017 Order.

II. IDENTITY OF MOVING PARTIES

The Movants are all actively involved in meeting the needs of children with disabilities through advocacy and, in some cases, through direct services as well.

The Arc of Washington State is a statewide non-profit organization composed of individuals with intellectual and developmental disabilities, their families, professionals and concerned members of the community. Its mission is to advocate for the rights and

full participation of all people with intellectual and developmental disabilities. This includes promoting necessary funding for special education.

The Arc of King County, an affiliated chapter of the Arc of Washington, is the oldest non-profit organization serving individuals with intellectual and development disabilities in the Puget Sound area. Its vision is for individuals with autism, Down syndrome, and other developmental disabilities to thrive as equal, valued and active members of the community. The Arc of King County hosts an annual legislative forum and regularly advocates for special education and other services to meet community needs.

TeamChild is a nationally recognized, non-profit legal advocacy program for low-income children at risk of or involved with the juvenile justice and child welfare systems. Since 1995, TeamChild has provided direct legal representation to thousands of low-income youth across Washington. TeamChild lawyers help these youth access their basic legal rights to education, health care, safe and stable housing and other social services. Many of the children that TeamChild represents have disabilities and are eligible to receive special education services.

TeamChild frequently submits *amicus* briefing in cases involving the legal rights and civil liberties of children both locally and nationally.

Washington Autism Alliance & Advocacy (WAAA) is a statewide nonprofit organization dedicated to helping children with disabilities thrive and become productive members of society. It does this by helping families access health insurance benefits, effective services in schools, and community-based services. WAAA is active in the legislative arena, regularly advocating for better understanding and treatment of children and adults with autism and developmental disabilities.

Open Doors for Multicultural Families is a non-profit organization providing culturally and linguistically relevant information and services to diverse families of persons with developmental and intellectual disabilities. It provides support in over 15 languages to hundreds of low-income immigrant and refugee families, mostly in South Seattle and South King County.

The Seattle Special Education PTSA is a nonprofit group of parents, educators, friends, and students dedicated to supporting all students with disabilities in the Seattle School District. Its mission is to assist families of students with disabilities as they navigate the education

system; to partner with parents and educators in advocating for improvements in the special education system; and to build bridges between the general and special education communities in order to bring increased educational resources and opportunities for all students.

The Bellevue Special Needs PTA is a non-profit group of parents, educators and community members dedicated to supporting students with disabilities throughout the Bellevue School District. It is committed to helping children with special needs succeed and reach their full potential.

Gary Stobbe, M.D., is a Clinical Assistant Professor of Neurology and Psychiatry at the University of Washington and also directs transition services at Seattle Children's Autism Center. James Mancini is a speech and language pathologist and coordinator of parent education at Seattle Children's Autism Center. Both have a professional interest in ensuring that children with autism receive the educational services necessary to prepare them for productive and independent living as adults.

State Rep. Gerry Pollet of the 46th District (including Seattle, Kenmore and Lake Forest Park) has served for five years as a member of the House Education Committee and worked on special education

issues leading to adoption of HB 2242. A leading advocate for special education in Washington, he has navigated special education as the father of a student with a learning disability. His House floor statement, as a parent and attorney, cited special education provisions and funding allocations in HB 2242 as “seriously flawed in terms of our basic constitutional duties,” and provided specific examples.¹

III. INTEREST OF AMICI

The Movants share a strong interest in ensuring that schools have sufficient resources to meet the actual needs of individual children with disabilities. Special education is necessary for these children to learn the same curriculum and access the same learning environment as their typically developing peers. In fact, under the Individuals with Disabilities in Education Act, 20 U.S.C. 1400 et seq., every school district must provide specially designed instruction to meet the individual needs of students with disabilities and it is undisputed that special education is part of the constitutional right to “basic education.” The Movants are concerned that inadequate funding will deny children their rights to basic education, and will cause children with disabilities

¹ Rep. Pollet’s June 30, 2017 statement from the House floor begins at 55:00: www.tvw.org/watch/?clientID=9375922947&eventID=2017061093&eventID=2017061093&startStreamAt=3340&stopStreamAt=3675&autoStartStream=true.

to fall behind and either drop out or graduate without the skills necessary for independent living and success.

The Movants recognize that each child has different educational needs depending on the nature of disabilities and how they affect learning. They are concerned that the State continues to fund special education based on outdated assumptions rather than actual costs, and continues to exclude thousands of children from state funding for special education altogether based on an unconstitutional enrollment cap.

The Movants are gravely concerned that special education was essentially left out of the 2017 reform legislation. Special education received an increase of only \$22.6 million in the biennial spending plan, smaller than for any other “categorical” program, and not nearly enough to close the special education shortfall of at least \$266 million that was identified by the State last year.² Moreover, the Legislature admittedly still caps the percentage of students receiving state funding for special education in each district. *See* 2017 Report to the Washington State Supreme Court by the Joint Select Committee on Article IX Litigation,

² *See* 2017 Report to the Washington State Supreme Court by the Joint Select Committee on Article IX Litigation, p. 13 (listing planned funding increases for various components of basic education); *Corrected Superintendent of Public Instruction’s Amicus Curiae Brief In Response to the Court’s Order Dated July 14, 2016*, p. 7 and Appendix C (school districts spent \$266 million more on special education in the 2014-15 school year than they received from the state’s special education and safety net funding).

p. 30. Although the cap was raised from 12.7 percent to 13.5 percent, it still leaves thousands of students in 90 school districts *without any state funding* to carry out their individualized special education plans, according to the State's latest apportionment data.³ Movants are concerned that EHB 2242, Chapter 13, Laws of 2017, contains provisions which unconstitutionally restrict districts and the state from meeting the needs of every student entitled to special education services. In sum, the Movants are interested in this stage of the case because the 2017 legislation leaves major holes in special education funding that will harm children with disabilities throughout the state.

IV. FAMILIARITY WITH THE ISSUES

The Movants submitted two amicus briefs in this case last year, and have closely followed the relevant developments in the Legislature since then. The Movants are familiar with the funding needs of special education students due to their extensively and regularly working with families and children in the disability community. The undersigned

³ New data on the percentage of special education students in each school district was posted in February 2017 at <http://www.k12.wa.us/SAFS/Misc/AppportionmentNotes.asp>. To find it, click on "January 2016-17 Special Ed Rate." Then go to the drop-down menu on line 5 of the first worksheet, and choose a district. Then go to the "District Specific" tab and look on line 35.

counsel regularly practices education law and is familiar with the issues raised by this case.

V. ISSUES TO BE ADDRESSED IN BRIEF

The amicus curiae brief will explain the ways in which the State's 2017 legislation fails to fully fund the actual costs of providing special education to all eligible children. The brief will explain why special education must be addressed in response to this Court's mandate to amply fund basic education. More specifically, the brief will explain how the special education funding cap affects children in individual districts, why the per-student allocation for special education is inadequate, and how the school funding formula fails to supply the staffing necessary for full inclusion of children with disabilities.

VI. REASONS FOR ADDITIONAL ARGUMENT

Additional argument will provide an independent viewpoint from the perspective of the disability community and those who regularly deal with the needs of special education students. The brief will respond to new information in the State's 2017 Post-Budget Report and related memorandum, and will not duplicate prior arguments. Arguments from the Movants will focus on an important aspect of basic education that is not expected to dominate arguments of other parties in the case. Movants

are uniquely suited to present the unmet needs for trained special education staff and ample special education funding.

VII. CONCLUSION

For the foregoing reasons, the Court should grant leave for The Arc of Washington State, The Arc of King County, TeamChild, Washington Autism Alliance & Advocacy, Open Doors for Multicultural Families, Seattle Special Education PTSA, Bellevue Special Needs PTA, Gary Stobbe, M.D., James Mancini and State Rep. Gerry Pollet to participate in amicus briefing.

Dated this 18th day of August 2017.

Respectfully submitted,

By: /s/ Katherine A. George

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CERTIFICATE OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington that on August 18, 2017, she served by email through the Court's electronic upload service, the registered parties, including:

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Dated this 18th day of August 2017.

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August 18, 2017 - 11:22 AM

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